

SUPREME JUDICIAL COURT

DOCKET NO. BAR 82-10

BOARD OF OVERSEERS OF THE BAR)
)
 v.)
)
 HARRY A. TABENKEN)

OPINION AND ORDER
OF DISBARMENT

On February 8, 1982, the Board of Overseers of the Bar filed the above-entitled information against the defendant alleging misappropriation of client's funds. The defendant's answer neither admitted nor denied the allegations of misconduct. On February 26, 1982, the defendant submitted his resignation as a member of the bar to the Board of Overseers of the Bar. On February 26, 1982, with the consent of the defendant, this Court entered an order of summary suspension and appointed a supervising attorney pursuant to M.Bar R. 7(n)(1). Thereafter, the Board forwarded its recommendation that this Court not accept the defendant's resignation on the grounds (1) that M.Bar R. 7(1) is inapplicable once an information has been filed and (2) that acceptance of the resignation on the then-existing record would not serve the public interest.

On May 18, 1982, the defendant appeared before the Court and publicly admitted the allegations of misconduct contained in the information. He thus obviated, at least in part, the second ground for the Board's recommendation against acceptance of his

resignation. Furthermore, the Court is of the view that while M.Bar R. 7(1) is indeed inapplicable at this stage of the proceedings, this Court is not precluded by the rule from invoking its inherent power to accept a resignation at any point prior to disbarment. The Court is confronted, therefore, with the necessity of deciding whether the interests of the public are best served by accepting the defendant's resignation or by entering an order of disbarment.

To his credit the defendant has not attempted to deny, justify or excuse his misappropriation of client's funds. He has also cooperated with the Court and counsel to insure an orderly transition of pending matters and to insure a prompt termination of his law practice. On that basis he seeks the benefit of what is publicly perceived to be the less dishonorable alternative of resignation. Bar Counsel presents the countervailing argument that once formal proceedings are commenced resignation would be contrary to the spirit of M.Bar R. 7(1). Bar Counsel further contends that vigorous condemnation of such conduct is necessary and that the acceptance of the defendant's resignation would damage the public's perception of this Court and the Board as energetic protectors of the public interest notwithstanding the fact that future reinstatement proceedings under M.Bar R. 7(o) would be identical under either alternative. Equally important perhaps, is that members of the bar, as well as the public, continue to perceive that this Court and the Board will condemn without hesitation the misappropriation of client's funds.


Ultimately, this Court must issue an order which will, by its terms, protect the public and the courts from attorneys who may be unable to discharge properly their professional duties. M.Bar R. 2(a). That purpose is best served here by the deterrent effect of an order of disbarment which will be perceived both by the public and by members of the bar as a vigorous condemnation of the defendant's improper conduct. Such action is necessary to avoid any suggestion that this Court is tolerant of misconduct by members of the bar or that it is reluctant to enforce our bar rules.

Accordingly, it is hereby ORDERED that:

1) Harry A. Tabenken be, and he hereby is disbarred as a member of this Court, and

2) In view of the defendant's previous suspension and compliance with M.Bar R. 7(n), the disbarment shall be effective as of February 26, 1982.

Dated: May 20, 1982


David G. Roberts
Justice, Supreme Judicial Court